My Notes

1. *Temporary Necessity argument . Weak defence in support of Death Penalty*
2. *Universal UPR*
3. *Global customary laws: eg North Korea, (Denies torture)*
4. *Since Peshawar attacks 7 years moratorium was lifted. Ranks in top 4 executioners. 365/2015. Outside China , 92% in Asia attributed to Pakistan*
5. *Shafqat , (originally for jan. 2015- Executed in 2016) juvenile capital punishment. Evidence by FIA, inadmissable by Sindh court. Informed 6 times that he has 7 days to live. Witness intimidation, evidence tampering , releasing to journalist....etc.*
6. *HAKAMADAs, served 50 years in prison, 30 years in solitary confinement. He had confessed. He was tortured. He was evicted in 2014 on DNA evidence. Japan upholded International commitment.*
7. *China: Revisiting laws 65- to now 58 crimes ...to DP. Difficulties in laws. The accused has to prove. 99.9 % fail. Appeals fail. Evidence is withheld. Eg. Self defence in Interogation vs Proved case ... discharged on mental illness of a politically connected .*
8. *SHATRUGUN CHAUHAN case in 2014 , Court commuted 15 death penalty cases. It included 2 mentally ill cases. SOLITARY CONFINEMENT was an additional punishment and was unconstitutional. The right to defend, inform, medical care, mental health evaluation was mandatory. Even the killers of Rajiv Gandhi , since 11 years had passed were commuted to life imprisonment on basis of Extensive Delay . (Rejected Adv Gen. That the prisoner must prove a damage to his health)*

Death penalty

The Death Penalty in 2016: trends confirm global movement toward restricted use of the death penalty

The number of abolitionist countries continued to grow in 2016, but national crises have created a political climate that heightens the risk that the death penalty will be reintroduced in a handful of abolitionist nations.

In 2016 the Center documented executions in 21 of the world's 195 states and territories. It is possible that other retentionist states—notably Syria, Yemen, Vietnam, and South Sudan—carried out secret executions not reported in the media or other sources, but the fact remains that a minority of the world's states retain the death penalty, and a smaller minority still carry out judicial executions.

The Center's data also shows that most executions are carried out in two regions: the Middle East and Asia. In the Middle East, our research indicates t**hat Iraq carried out 101 executions and Iran carried out 545** executions in 2016. In both countries the actual number of executions is likely to be higher, given the governments' underreporting of executions. According to a tally based on official announcements, Saudi Arabia carried out 153 executions in 2016, maintaining the high number of executions begun after King Salman took power in January 2015.

In Asia, sources estimate that China carried out thousands of executions in 2016 (although the number of executions remains a state secret). After China, the highest numbers of executions in Asia were carried out in **Pakistan, which executed 87 people in 2016**. This is a dramatic reduction in the number of executions from 2015, when Pakistan executed approximately 320 people. The drop in executions may be attributable to public concern about the application of the death penalty. For example, there was public outcry in October 2016 when the Pakistan Supreme Court found that two men executed in 2015 were innocent, and in late 2016 public pressure led to a stay in the execution of Imdad Ali, a mentally ill man.

As the only country to apply the death penalty in Europe, **Belarus carried out 3** executions in 2016, with 1 person remaining on death row in Belarus and at risk of execution.While Belarus is described as "the death penalty's final frontier in Europe," the Turkish president R**ecep Tayyip Erdogan has signaled a desire** to reinstate the death penalty—abolished in Turkey in 2004—in response to the failed coup in July 2016.

The United States was the only state to carry out executions in the Americas last year, as has been the case for the past 8 years in a row. In the United States, executions have fallen to a 25-year low, with **20 executions carried out in 2016** (compared to 98 in 1999, the highest number in the past 25 years). Nevertheless, the number of people on death row in the United States has only slightly declined in the last twenty years, from 3,219 in 1996 to **2,905 in 2016**.

A majority of African countries with death penalty laws are considered abolitionist de facto, having not carried out an execution in over 10 years. A small number of countries in Africa carried out executions in 2016. Botswana and Egypt each executed 1 person, South Sudan carried out a reported 2 executions, and Nigeria carried out 3 executions. Somalia carried out 4 executions (with Somaliland executing 8 people and Puntland 1 person). Secrecy surrounding executions, especially in Egypt, Somalia, and Sudan, means that estimates of executions may be unreliable. Burundi, which abolished the death penalty in 2009, is another country in danger of reintroducing the death penalty. In February 2016, Minister Emmanuel Ntahomvukiye stated in parliament that the death penalty should be reinstated to punish those involved in the failed 2015 coup. Other countries in Africa continue to restrict their use of capital punishment: in October 2016 Kenyan president Uhuru Kenyatta commuted the sentences of 2,655 men and 92 women to life imprisonment. Nevertheless, Kenyan courts continue to impose death sentences.

In 2016, two countries—Benin and Nauru—confirmed that they had abolished the death penalty for all offences. The Constitutional Court of Benin ruled in January 2016 that Benin's 2012 ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights (aiming at the abolition of the death penalty) rendered all legal provisions stipulating the imposition of the death penalty inoperative, effectively confirming the 2012 abolition of the death penalty.

In June 2016, Nauru, which had not carried out an execution since its independence in 1968, implemented a new criminal code that removed any mention of the death penalty left over from the previous 1899 criminal code. It appears, however, that Nauru's Constitution retains an article allowing for the imposition of the death penalty if new legislation prescribing the death penalty for an offence is enacted. In 2016, Guinea abolished the death penalty for ordinary offences, but retains the death penalty for crimes under military law or in exceptional circumstances.

Every two years the world gains insight into the political status of the death penalty worldwide, when the UN General Assembly votes on a resolution calling for the progressive restriction and eventual abolition of the death penalty. Confirming the global trend toward abolition of the death penalty, the 2016 resolution on a global moratorium on the use of the death penalty resolution passed with 117 votes in favor, 40 against and 31 abstentions. Notably, Guinea, Malawi, Namibia, Swaziland, Solomon Islands, and Sri Lanka moved from abstention to voting in favor and Zimbabwe from voting against to abstention.

Since 2007, when the resolution was introduced, the number of states favoring the moratorium has increased from 104 in 2008 to 117 in 2014 and 2016, but last year's vote was marked by a record-breaking number of states withdrawing their support for the moratorium. Two countries—Burundi and South Sudan—moved from voting in favor of the resolution to voting against. Equatorial Guinea, Niger, Philippines, and Seychelles moved from vote in favor to abstention, in the case of the Philippines reflecting the newly-elected president's campaign promise to reinstate the death penalty.

The resolution included an important addition aimed at improving transparency in the application of the death penalty: a request that retentionist countries provide information on scheduled executions. Opponents of the moratorium, who contend that international law allows for the imposition of the death penalty for "the most serious crimes," successfully inserted a new paragraph to the resolution on state sovereignty. This paragraph reaffirms "the sovereign right of all countries to develop their own legal systems, including determining appropriate legal penalties, in accordance with their international law obligations." A similar amendment was proposed and rejected in 2014.

Nevertheless, the resolution does not shy away from framing the death penalty as a human rights issue and continues to call upon states to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims at the universal abolition of the death penalty.

Cornell Law School Launches the Cornell Center on the Death Penalty Worldwide

The Cornell Center on the Death Penalty Worldwide celebrated its official launch on October 25, 2016, with an expert panel on challenges and opportunities on the path to abolition. The Dean of Cornell Law School, Eduardo Peñalver, welcomed the opening of the Center and highlighted that Cornell was the perfect institution to host it, considering that Cornell houses such outstanding scholars on the death penalty as Sandra Babcock, John Blume, Sheri Lynn Johnson, and Keir Weyble. The Center builds upon the Death Penalty Worldwide database that started in 2011 and will continue to conduct research on the death penalty with the goal of bridging knowledge and advocacy gaps on state practices related to capital punishment. The Center's research areas will include Latinos on death row in the U.S., women on death row, defendants with mental illness or intellectual disabilities, as well as fair trial violations and wrongful capital convictions. This research and related projects will involve Cornell Law School students, who will work with Center staff to advance the rights of prisoners facing capital punishment.

One of the Center's main objectives is to increase the quality of legal representation for capital defendants around the world. The Center will launch an annual intensive workshop for capital defenders in summer 2017. Named for the seminal South African judgment abolishing the death penalty, the first session of the Makwanyane Institute will welcome capital defenders from common law countries in Africa for specialized capital training, litigation support and community building.

The Center was privileged to have renowned anti-death penalty activist Sister Helen Prejean, the author of Dead Man Walking, open the launch through videoconference. Sister Helen emphasized how important it was to be part of the global movement to end the death penalty. She shared the story of how she became aware of the conditions of death row inmates in the U.S. after she started writing letters to a death row inmate in Louisiana whom she later accompanied to his execution. She highlighted how crucial it is to conduct research on the death penalty and expressed her appreciation that the Center will continue to bring reliable information to the public.

33The expert panelists covered a wide range of issues and challenges surrounding the death penalty, both in the U.S. and abroad. Delphine Lourtau, Executive Director of the new Center, highlighted the current global decline of the death penalty, with executions being concentrated in a handful of states. China executes more defendants than the rest of the world combined, and together the five following top executioners (Iran, Pakistan, Saudi Arabia, Iraq and the United States) account for over 90% of the world's remaining executions. Ms. Lourtau also mentioned that global terrorism has become a new challenge on the path towards abolition as several states, such as Pakistan for instance, have increased their use of the death penalty in response to terrorism.

When asked for her predictions on the abolition of the death penalty in the U.S., Denny LeBoeuf, director of the ACLU's John Adams Project, expressed confidence that the death penalty would one day be abolished, but stated that systemic changes in the death penalty take place over many generations. She also underlined that the death penalty is increasingly seen as a human rights issue, not a criminal justice issue. Professor Sheri Lynn Johnson, Professor of Law at Cornell Law School, opined that she was not optimistic about abolition in the near future, but foresaw that the U.S. would likely see a continued decrease in the use of the death penalty by states.

Victor Uribe, Head of Legal Affairs in the Embassy of Mexico, explained that Mexico is strongly opposed to the death penalty in every circumstance and evoked the Avena case, Mexico's lawsuit against the U.S. before the International Court of Justice on the violation of the consular rights of Mexican nationals facing capital prosecutions. Mr. Uribe emphasized the vulnerability of foreign prisoners on death row, who often do not speak English and are very isolated. During the question and answers session the audience also raised the issues of death row conditions, the death row phenomenon, how the emotional response to crime affected abolition prospects, and of the costs associated with death row.

Following this engaging panel discussion, Professor Sandra Babcock, founder and Faculty Director of the Center, gave a keynote speech in which she recounted her career path and how her different experiences in the U.S. and abroad culminated in the creation of the Cornell Center on the Death Penalty Worldwide. Her first client facing the death penalty in the U.S. was a Canadian national. Professor Babcock was intrigued by the fact that he did not have any contact with the Canadian consulate, which was attributable to a violation of the Vienna Convention on Consular Relations. After raising this treaty violation in a domestic U.S. court, but finding the court unresponsive to the issue, Professor Babcock became an advocate for the U.S. upholding its obligations under the Vienna Convention on Consular Relations. This led her to later become counsel for Mexico in cases of Mexican nationals facing the death penalty in the U.S. She was Mexico's counsel before the International Court of Justice in Avena and Other Mexican Nationals, a landmark judgment in which the court found that the United States had breached its international obligation to notify detained Mexican nationals of their rights to have Mexican consular officers notified of their detention, depriving them of the assistance of the Mexican government at the time of their capital prosecutions. The Avena litigation led to

groundbreaking decisions from the Oklahoma and Nevada courts implementing the Court's judgment, ultimately leading to the commutation of the death sentence of Osbaldo Torres. For her work, she was awarded the Aguila Azteca, the highest honor bestowed by the government of Mexico upon citizens of foreign countries, in 2003.

This created a bridge between Professor Babcock's U.S. and international death penalty work. In 2007, as she was a clinical professor leading a trip with students in Malawi, the Malawian High Court issued the Kafantayeni decision striking down the mandatory death penalty. Professor Babcock decided to help prisoners sentenced under Malawi's mandatory death penalty to be resentenced and worked with the judiciary, the Malawi Human Rights Commission, lawyers and paralegals to make it happen. Through her work in Malawi, 93 former death row prisoners have been released, many of whom appeared in a photo slideshow recording the joy and emotion of former death row inmates as they walked out of prison as free men and women.

The Center is the culmination of many years of hard work and will cement Cornell as a center of excellence on death penalty research and advocacy. It will lead to important collaborations on many issues, including identifying the persistent racial, ethnic and gender bias in the application of the death penalty; implementing international safeguards protecting the rights of persons facing the death penalty; and improving the quality of legal representation in countries where resources are scarce.

-- Anna Kiefer, Research Fellow, Cornell Center on the Death Penalty Worldwide

Pathways to Abolition of the Death Penalty: Analyzing the Elements of Successful Abolition Strategies

Death Penalty Worldwide at Cornell Law School is pleased to announce the publication of its most recent study of the factors leading states to abolish capital punishment in law. Pathways to Abolition of the Death Penalty examines the historical and political processes underlying abolition, including the roles played by state and non-state actors such as parliamentarians and government officials, human rights defenders and international organizations, journalists and public opinion. The study, which benefitted from the support of the Swiss government, was launched at the 5th World Congress Against the Death Penalty in Oslo, Norway, on June 23.

Our project expands upon the groundbreaking report published by the International Commission against the Death Penalty in 2013, How States Abolish the Death Penalty. Building upon the case studies and trends observed in the ICDP's report, our publication covers 14 new jurisdictions across the world. We examined examples across a range of geographical regions and periods, from the world's first full legal abolition in Venezuela in 1863 to the most recent abolition success stories (Fiji, Suriname, Republic of Congo, Madagascar, Benin and Maryland).

From these diverse historical and political contexts, we analyzed the elements of effective abolition strategies. While there is no universal blueprint and every country comes to abolition in its own way and on its own timeline, our study suggests that, especially in recent years, pathways to abolition rely on a combination of factors, including **(1) restricting or suspending the death penalty in the years leading to abolition; (2) engaging parliamentary allies; (3) making use of the advocacy opportunities provided by human rights bodies' prioritization of capital punishment; and (4) harnessing the momentum of the global trend towards abolition.**

-- Delphine Lourtau and Sandra Babcock

A Grim Yardstick: Measuring Death Penalty Trends Within UN Human Rights Mechanisms

Professor William **Schabas** described the p**rogress of death penalty abolition as a useful looking glass through which to assess the international community's broader respect for human rights.** The death penalty is a human rights issue that more easily lends itself t**o quantifiable analysis,** unlike many other human rights, such as slavery or torture.[1] It is, in essence, a grim yardstick of the world's respect for human rights as a whole.

Renowned **human rights expert Bryan Stevenson** stated that **"the moral arc of the world is long, but it bends towards justice**"[2] and the death penalty's progress towards abolition is certainly evidence of this.

Despite this trend beginning to slow, the death penalty is no longer a method of punishment that death penalty States eagerly defend, nor do they proudly wear the badge of executioner. Within the context of UN human rights mechanisms, the **various perceived benefits of the death penalty, those tired and false justifications of deterrence and revenge, are no longer relied upon.** In their place, death penalty States fall back on **conciliatory** language, justifying the use of the death penalty as **a temporary necessity,** a **means to an end,** or simply the existence of **popular support within the community for its retentio**n.

The **Universal Periodic Review, or UPR** for short, is a rather recent creation of the **UN Human Rights Counci**l. It was created to replace the monitoring role played by the United Nations Commission on Human Rights, which fell out of favour due to over-politicisation and a lack of independence. This is an important factor to be aware of as it shaped the mandate of the UPR. The new process is intended to be c**ollaborative, inclusive, and optimistic**. The process of the UPR is q**uite simple.** All States are subject to review during a cycle which lasts approximately 4 years. The review process involves a **report by the State under review and "alternative" reports by NGOs** and other stakeholders. The p**rocess culminates in a working group where questions are put, recommendations for improvement made, and certain obligations accepted voluntarily**. While the effectiveness of this process at bringing about concrete human rights progress on the ground is widely debated, it is nevertheless a powerful tool for identifying customary international law.

Customary international law allows for States to be bound by **international minimum standards** that go beyond their treaty obligations. In order to be universally binding, these standards must be widely recognised by the international community and can be identified by what States both say and do. Their existence is vitally important to the d**evelopment and protection of human rights gl**obally. Examining what States do in practice is a self-evident means for identifying customary law, but what a State says, even when it contradicts its own actions, is also relevant. **If North Korea, for example, denies the use of state-sanctioned tortur**e, this comment can be used as evidence of the universal acceptance of the prohibition against torture, even if the State does, in fact, commit acts of torture. In other words, the very denial of the existence of torture implies an acknowledgement that torture is prohibited under international law, thereby further cementing the formation of the customary international norm.

Ban Ki-Moon recognised the power of the UPR to bring about change through the identification of death penalty norms, stating that "[e]ven States that are not subject to conventional obligations with respect to capital punishment have participated in the universal periodic review as if they were subject to international norms concerning the death penalty."[3] My study of the UPR process revealed fascinating insights into just how tenuous support for the death penalty truly was. For example, Barbados relies on the fact that the death penalty has been in abeyance for over 30 years as evidence that "spoke louder" than an official moratorium. [4] Similarly, Bangladesh stated that it is not able to impose a moratorium "at this stage", showing tacit support for ending executions in the future. A number of other countries, including Viet Nam, stated that the death penalty will be abolished when conditions allow. Similar progressive commitments were made by a number of other States, including Iraq, which hoped that security and stability would be "paving the way for the abolition of capital punishment".[5] It becomes immediately apparent from analysing the language of death penalty States that a large portion of them view the death penalty as either a transitionary measure, an obstacle to be overcome, or a totally defunct practice.

When one considers that only 19 States advocate for the use and expansion of the death penalty within the UPR together with the positive trend of more states abolishing capital punishment each passing year, it becomes apparent that the world embraces the restriction and ultimate abolition of capital punishment. While it cannot yet be said that total abolition is a customary norm, there is certainly a strong case to argue that the continued restriction of the death penalty is custom. This means that under international law, States may not expand the application of the death penalty and must restrict it to comply with universally recognised minimum standards. These minimum standards include ending the death penalty's application to drug offences and other non-fatal crimes, and prohibiting the execution of children. Furthermore, the way in which capital punishment is imposed is a vitally important area of restriction, and international custom arguably demands the end of mandatory death sentences, and the end of execution methods such as stoning which clearly violate the prohibition against cruel and unusual punishment.

The UPR not only reveals evidence that supports the development of customary international law, but also provides invaluable information to abolitionist States on how to conduct anti-death penalty advocacy. In particular, it demonstrates the need for an incremental approach, which takes into account the relevant issues confronting the target death penalty State. For example, one of the most recalcitrant death penalty States, Iran, received 27 recommendations regarding capital punishment. 24 of those recommendations called for total abolition, and were all rejected outright. However, the three that were accepted were far more incremental. They related to Iran adhering to minimum standards when imposing the death penalty, in particular ceasing its application to the crime of apostasy and to children. By eliciting Iran's endorsement, these recommendations contribute to the development of an international trend and also give future advocacy a strong starting point.

The benefits of examining the death penalty within the UPR are threefold: improving our knowledge of contextual realities and tailoring advocacy accordingly, creating a firm basis upon which to commence future advocacy, and identifying customary international law. Secrecy is the death penalty's greatest ally, and the UPR creates a degree of transparency that will assist the abolitionist cause in the future. However, abolitionist States and NGOs must encourage effective and incremental recommendations to death penalty States. The international community must keep in mind that the difference between retentionist and abolitionist States is "less one of temperament than of timing".[6] In acknowledging this reality, we can better assist death penalty

States in moving incrementally towards total abolition. The steady progress towards abolition demonstrates that the death penalty is becoming increasingly irrelevant as a form of punishment. The UPR will provide invaluable assistance in ensuring that a customary norm of total abolition is arrived at sooner rather than later.

-- John Riordan is an Australian lawyer and anti-death penalty advocate. He has worked as a com committee member for Reprieve Australia, as well as co-founding the Mercy Campaign in support of two Australians, Andrew Chan and Myuran Sukumaran, who were executed in Indonesia in 2015. He recently completed his LLM of Public International Law, writing his thesis on the death penalty and international law.

The Death Penalty in 2015: Fewer States Carry Out An Overwhelming Majority of the World's Executions

Death Penalty Worldwide's tally of executions carried out around the world in 2015 delivers two key insights on global attitudes towards capital punishment. First, the death penalty is increasingly a localized phenomenon, with a small and declining number of states carrying out the vast majority of the world's executions. Second, the application of capital punishment continues to be characterized by deliberate secrecy.

Analyzing global trends on the use of the death penalty is partly an exercise in informed guesswork. Most retentionist states either treat capital punishment as a state secret or provide only partial information on their use of the death penalty, conducting capital trials behind closed doors and carrying out covert executions. The inscrutability of death penalty practices makes it difficult to assess the real prevalence of capital punishment in national justice systems and prevents monitoring for human rights abuses. This almost universal lack of transparency sets the death penalty apart as a punishment with more political than penological underpinnings.

Still, it is clear that judicial executions are increasingly confined to a very small number of states that execute at disproportionately high rates. Only 18 of the world's 195 states and territories were known to carry out a death sentence in 2015 – the smallest number since 2009 – and only 8 of these executed more than 10 people. (It is possible, however, that other retentionist states carried out secret executions that we don't know about, notably in Vietnam, North Korea and Yemen.) China is believed to carry out thousands of executions – more than the rest of the world combined – but its tight control over death penalty data has forced most organizations to give up gauging execution figures. Even there, however, use of capital punishment has decreased in recent years. One of the few organizations to venture an estimate, the Dui Ha Foundation, reported that around 2,400 people were executed in 2013 and again in 2014, reflecting a significant decline in the number of executions over the past decade. Collectively, the following **four top executioners** – I**ran, Pakistan, Saudi Arabia and the United States – carried out 875 executions at a conservative estimate**. Setting aside China, this represents 91 percent of the 954 executions confirmed for 2015. Moreover, this figure is based on the 364 executions officially announced by the Iranian authorities, but several non-governmental rights groups, all of which acknowledge that their figures are likely underestimates, report that as many as 966 or even 1,084 individuals were executed in 2015. As in past years, Iran's execution numbers represent the world's highest per capita execution rate.

Our available data also shows that most executions are carried out in two regions: the Middle East, where 6 states executed 540 individuals, and Asia, where in addition to China 8 countries executed 354 people. But even in Asia, executions are largely confined to only a few countries: **Pakistan alone accounted for 92 percent of all executions in Asia outside of China.** Only two Sub-Saharan African countries executed prisoners in 2015, Somalia and Chad, and the United States was the only state to carry out executions in the Americas last year. No executions were recorded in Europe or the Pacific region.

While the global use of capital punishment has been declining steadily for years, there are exceptions. Pakistan resumed executions after a **7-year moratorium in December 2014 following the Peshawar terrorist attack**. While at first the measure was sanctioned only for prisoners convicted of terrorist acts, the government quickly broadened the authorization to execute for other offenses. With a total o**f 325 executed prisoners in 2015** – almost one a day – **Pakistan was catapulted in the space of a year to one of the world's most prolific executioners, second only to China and Iran**. Executions have also surged in Saudi Arabia, which beheaded 158 prisoners in 2015 against 90 in 2014 (and 79 in the two previous years). Some analysts believe that the increase in executions is "a survival move by a kingdom still shaken by the Arab uprisings of 2011 and a leadership in a power struggle."[1]

Further underlining the political dimension of capital punishment, two more states in which the death penalty had fallen into disuse resumed executions in 2015 in a show of the state's strength against terrorism. In February, Jordan executed two Al Qaida fighters in retaliation for the Islamic State's capture and murder of a Jordanian pilot, ending an 8-year moratorium on executions. Chad, which after 12 years without executions was classified by the UN as an abolitionist de facto state unlikely to implement capital punishment, executed ten members of Boko Haram in August.

Death Penalty Worldwide's global executions monitor for 2016, updated on a weekly basis, is available here.

-- Delphine Lourtau

Global Executions Monitor 2015

By number of executions:

China (1000's), Iran 364 (official) up to 966 – 1,084, Pakistan 325, Saudi 158, United States 28, Somalia 22 (including Somaliland and Puntland), Indonesia 14, Egypt 12, Chad 10, Taiwan 6, Bangladesh 3, Iraq 3, Japan 3, Jordan 2, Afghanistan 1, India 1, Singapore 1, United Arab Emirates 1.

By region:

MENA: Saudi 158, Egypt 12, Iran 364 (official) up to 966-1084, Iraq 3, Jordan 2, United Arab Emirates 1.

Asia: Afghanistan 1, Bangladesh 3, China (1000's), Japan 3, India 1, Indonesia 14, Pakistan 325, Singapore 1, Taiwan 6.

Sub-Saharan Africa: Chad 10, Somalia 22 (including Somaliland and Puntland).

North America: United States 28.

Pakistan executes juvenile tortured into confessing crime

His execution defies two international human rights principles that are universally recognized: the exclusion of children from capital punishment and the absolute prohibition on torture.

Shafqat's execution was the country's 193rd since last December, when Pakistan lifted a 6-year moratorium on civilian executions. Since then, Pakistan has carried out executions at the staggering rate of roughly a person a day, outstripping many of the world's most active and controversial executioners, including Saudi Arabia, Iraq and the United States. Only Iran and China are now known to execute more people than Pakistan.

The twists and turns taken by Shafqat's case show a criminal justice system that is failing, amid this onslaught of executions, to implement fundamental human rights or to respect Pakistan's international commitments in this regard.

Sha**fqat was originally scheduled to be executed in January 2015,** but his execution was stayed after his lawyers at the Justice Project Pakistan challenged his death sentence on the grounds that he was a juvenile at the time of the offense. The Ministry of the Interior promised to conduct an investigation into the circumstances surrounding his arrest, citing the government's concern for human rights. It took two more execution warrants and two more last-minute stays, however, before an investigation materialized.

The investigation, conducted by Pakistan's federal police, the **Federal Investigation Agency, was so unreliabl**e that it was later called "prima facie illegal" by the Islamabad High Court and deeme**d "inadmissible' by the** Sindh Human Rights Commission. The organization Reprieve notes that "it ran the full gamut of outrageous **and releasing the results of the inquiry the day before Shafqat's lawyers were scheduled to give evidence on** their client's behalf." No other investigations were launched, however, and Shafqat was executed without a court ever examining evidence that he was a minor at the time of the crime and that his "confession" was extracted through torture.

In his decade on death row,, only to be reprieved at the last minute – an experience that Shafqat described to his lawyers in a piece that was published shortly after his execution. International human rights bodies and national courts around the world have increasingly recognized that such long incarcerations, under a constant threat of death, amount to cruel, inhuman or degrading treatment in violation of international standards.

Pakistan has one of the world's largest death rows: over 8,500 prisoners are believed to be currently under sentence of death. In light of the systemic failures brought to light by Shafqat Hussain's case, Pakistan should refrain from any further executions and restore a death penalty moratorium.

-- Delphine Lourtau

Oklahoma's Execution Process: Unlawful, Inhumane, and Immoral

Last night, Oklahoma executed Clayton Lockett using a combination of drugs that had never before been used to kill a human being. Oklahoma refused to disclose the source of the drugs in the weeks leading up to the execution, dismissing attorneys' concerns that using the untested drugs could cause an excruciatingly painful death. The Oklahoma Supreme Court issued a short-lived stay of execution, but then backed down after pressure from the Oklahoma Governor (who said she would disregard the Court's stay order) and Oklahoma legislators (who threatened to impeach the justices).

The sequence of events leading to Lockett's death has been described by a number of sources, including the New York Times. There is no dispute that Lockett died an agonizing death. He was executed using a three-drug combination that included. The first drug, midazolam, should have rendered him unconscious, but it failed to do so—either because it wasn't administered in a high enough dose, or because it was not properly injected into one of his veins. The second drug, pancuronium bromide, should have paralyzed him so that he couldn't move. Yet Lockett was still moving after more than 13 minutes had passed—and by some accounts, he was writhing in pain, grimacing, speaking, and struggling to sit up. The third drug, potassium chloride, causes a massive heart attack that experts say would cause unbearable pain if the prisoner is not sedated. In fact, Clayton Lockett died of a heart attack 43 minutes after the drugs were first injected into his body.

Attorneys around the country have fought to persuade the courts that they should not permit executions to go forward in the absence of evidence that lethal injection drugs are reliable and effective. Courts in Texas, Oklahoma, and Missouri, among other states, have rejected these arguments, largely because of a U.S. Supreme Court decision called Baze v. Rees. In Baze, the Supreme Court dismissed the petitioner's argument that poorly trained prison staff could administer improper doses of the sedative that renders a prisoner unconscious. In essence, the Supreme Court held that an execution method that results in pain, "either by accident or as an inescapable consequence of death," does not constitute cruel and unusual punishment. The Court shifted the burden to the prisoner to establish that "the State's lethal injection protocol creates a demonstrated risk of severe pain."

Baze must now be re-examined. The botched execution of Clayton Lockett calls for effective judicial oversight of state lethal injection protocols. Moreover, there can be little doubt that an execution procedure that results in prolonged agony for the prisoner is not only inhumane, it is torturous.

More than 20 years ago, in Ng v. Canada, the United Nations Human Rights Committee held that executing prisoners using the gas chamber constituted cruel, inhuman or degrading treatment or punishment. Their rationale: "asphyxiation may cause prolonged suffering and agony and does not result in death as swiftly as possible, as asphyxiation by cyanide gas may take over 10 minutes." In light of the 43 minutes that it took Clayton Lockett to die, there can be little doubt that his execution violated international norms providing that the death penalty can only be carried out in a manner that causes "the least possible physical and mental suffering."

Given the evidence that Oklahoma's actions violated the Torture Convention, President Obama should ensure that an impartial investigation is carried out under Article 12 of the Convention.

-- Sandra Babcock

The Consequences of Wrongfully Convicting the World's Longest Serving Death Row Inmate

Iwao **Hakamada,** a man widely believed to be the world's longest serving death row inmate, may have been serving time for nothing at all. On March 27, 2014, the Shizouka District Court in Japan suspended his sentence because new evidence suggests that **he was wrongfully convicted**. Mr. Hakamada was sentenced to death in **1968 for murder, but new DNA evidence points** to his innocence, leading many to believe that his original conviction was based on falsified evidence. The Court released Hakamada from the Tokyo Detention House after his petition for a retrial was granted. To date, **Hakamda has served nearly 50 years on death row; 30 of those years were spent in solitary confinement.** Hakamada is not the first person in Japan to be wrongfully convicted, but his case exemplifies the abhorrent consequences of violations to the right to a fair trial.

Hakamada's retrial represents t**he 6th time since 1945 that the courts in Japan have granted a retrial** in a death penalty case. Incidences of wrongful convictions are being uncovered more frequently in Japan. This may be on account of pretrial detentions in police custody, the daiyo kangoku system, which can lead to lengthy interrogations. The United Nations Committee Against Torture has expressed concern about the system, stating that the lack of effective monitoring and reported abuse raised concerns about human rights violations. Indeed, **physical and psychological torture during interrogations is a significant source of false** confessions. Iwao Hakamda's interrogatio**n lasted for 20 days, and** although he confessed during

the interrogation, he ultimately claimed he was innocent at trial. About half of the people on death row in Japan claim they are not guilty of all or part of the charges for which they have been convicted.

If exonerated, Hakamada has a right to compensation under Japanese and international law. Article 14 of the International Covenant on Civil and Political Rights protects the right to compensation, which can be satisfied in several ways. Conferring discretion to a judicial body to determine compensation is the means that Japan has cho**sen to fulfill its obligations under the ICCPR**. Article 40 of the Japanese Constitution stipulates that courts will decide the amount of compensation as provided by law. The Criminal Compensation Act further provides that the amount of compensation shall be determined after considering the length of detention, mental and physical loss suffered, and negligence by the police and prosecutors.

Hakamada's resentencing, accompanied by public outrage, will add further ammunition to the movement for criminal justice reform in Japan. For more information on wrongful convictions under international law, see the Death Penalty Worldwide's post on innocence and wrongful convictions here.

-- Shubra Ohri

Posted at 9:03 AM | Permalink

The World's Top Executioner: Capital Punishment in China

Death Penalty Worldwide has just updated its research on capital punishment in China. China executes thousands of people every year, but it's difficult to provide exact figures because of the secrecy surrounding executions. Another non-governmental organization, the Dui Hua Foundation, estimates that China executed 3000 people in 2013—more than the rest of the world put together.

The number of executions in China is particularly troubling in light of reports that capital defendants do not receive fair trials according to international standards. Suspects are sometimes d**enied access to attorne**ys, la**wyers are barred fr**om representing certain clients, and courts withhold **evidence in politically sensitive ca**ses. Moreover, de**fendants are presumed guilty and must prove their innocenc**e, with the result that 99.9% of criminal defendants are found guilty. **Appeals are rarely successfu**l. Recent cases have also raised the concern that the death penalty is applied primarily against the poor.

In September 2013, an impoverished street vendor who claimed to have stabbed two officers in self-defense during an interrogation was executed for murder. His attorney maintains that key evidence was missing during his trial.

In contrast, Gu Kailai, the wife of former Politburo member Bo Xilai and daughter of a revolutionary general, was given a suspended death sentence in August 2012 on grounds of mental illness after being convicted of planning and carrying out the murder of a foreign businessman.

Despite China's seeming enthusiasm for the death penalty, the country has enacted important reforms in recent years aimed at reducing the total number of executions. In **2007, the Supreme People's Court reclaimed its right to review every death sentence, after which the estimated number of executions was reduced by ha**lf. China took a further step away from the death penalty in 2011 by reducing the number of **death-eligible crimes** from 68 to 55 and banning **the death penalty against those aged over 75 i**n an amendment to the Criminal Law. Recently, the president of the Supreme People's Court publicly urged courts to hand out fewer death sentences. China may be far from abolishing capital punishment, but these are noteworthy reforms for the world's top executioner.

Although the Chinese government is striving to curb its use of the death penalty through legal reform, it has yet to ratify any international treaties that impose restrictions on the use of the death penalty. **China is not a party to the ICCPR and has repeatedly voted against the UN General Assembly's Moratorium on the Death Penalty** Resolution. Even in the absence of international commitments, China should enact reforms that will enhance fair trial protections and reduce the arbitrary application of the death penalty. The extent to which Chinese leaders are willing to implement additional domestic reforms will be paramount in China's efforts to reduce the volume of executions.

-- Jee Won Oh

You can access Death Penalty Worldwide's full research on capital punishment in China here.

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India's Supreme Court Draws Upon Human Rights Standards to Commute Death Sentences

On January 21, 2014, India's Supreme Court reaffirmed the right to life in a landmark decision that cited international human rights standards. **In Shatrughan Chauhan & Another vs Union of India & Others, the Supreme Court commuted the death sentences of 15 prisoners.** The decision strongly emphasized the human rights of death row prisoners – deno**uncing such practices as executing individuals with mental illness, solitary confinement, and prolonged detention on death row.**

Much of the court's decision focused on the nature of the clemency process under Indian law. Indian law provides that death row inmates can apply for clemency by submittin**g "mercy petitions"** to the President. The court held that "[m]ercy jurisprudence is part of an evolving standard of decency, which is the hallmark of society." The court repeatedly noted that **clemency is not merely a matter of grace,** but is a **constitutional duty of great significance that must be exercised responsibly and expeditiously.**

The Supreme Court faulted the executive for its inexcusable delay in considering the clemency petitions of 13 petitioners. Drawing heavily on the jurisprudence of the Privy Council and the European Court on Human Rights, the court reasoned that d**elay in the execution of a death sentence causes psychological torture**. The court observed that **"undue, inordinate, and unreasonable delay"** in carrying out the death sentence constitutes torture and justifies c**ommutation to life imprisonment.**

Equally important, the court commuted the death sentences of two prisoners based on evidence that they su**ffered from mental illness.** The court embraced international norms prohibiting the execution of prisoners with mental illness, citing R**esolution 2000/65 of the former UN Human Rights Commiss**ion calling upon all states to refrain from executing any person who suffers from "any form of mental disorder," as well as a 1**996 report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, and the UN General Assembly's 2007 resolutio**n calling for **a moratorium on the death penalty.**

In the case o**f Maganlal Barela,** the court condemned the failure of the executive branch to consider evidence of the petitioner's mental illness as grounds for clemency.

The court also addressed the i**ssue of solitary confinement,** finding that death row inmates may not be held in solitary confinement until their mercy petitions have been denied. According to the court, solitary confinement constitutes **"additional and separate punishment"** that i**s unconstitutional.** Further, the court issued **guidelines for the clemency process to protect the rights of death row prisoners** moving forward. The judges held that prisoners have a right to legal aid to prepare legal challenges to the clemency process and to be informed of the result of their mercy petition in writing. In addition, prison officials must ensure th**at prisoners receive regular mental health evaluations a**nd be given **"appropriate medical care."** Finally, the court determined that the government must carry ou**t post-mortem examinations of executed prisoners to provide the courts with data on the cause of death**, which will allow for consideration of whether hanging constitutes cruel and inhuman punishment.

Less than a month after this landmark decision, the Supreme Court commuted the **death sentences of three individuals convicted of the 1991 assassination of former Prime Minister Rajiv Gandh**i. The Court reasoned that the unreasonable delay in considering the inmates' mercy petitions, a **delay of more than 11 year**s, warranted a commutation of their death sentences.

It also **rebuffed the Attorney General's argument t**hat in order to have their sentences commuted, death row inmates had to prove actual harm occasioned by the delay. The court reaffirmed the fundamental rights of all citizens, including death row inmates.

The decisions come at an especially important time in India, as it had recently begun carrying out executions again after what many considered to be an undeclared moratorium on the death penalty. The decisions have also re-ignited the public debate over the death penalty in India.